

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

WENDELL TERRY NELSON, <i>et al.</i> ,)	
)	
Plaintiff,)	
vs.)	NO. CIV-12-08-HE
)	
B. BARTON, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff Wendell Terry Nelson, a California prisoner appearing *pro se*,¹ filed this action pursuant to 42 U.S.C. § 1983, apparently along with seven other prisoners who signed the complaint, on behalf of themselves and all other similarly situated Muslims. Consistent with 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to Magistrate Judge Bana Roberts for initial proceedings. The court previously adopted her recommendation that plaintiffs' motion to certify a class be denied and the magistrate judge now recommends that plaintiffs Dotson, Ali, Allen, Wright, Siebert, Bolton and Nix be dismissed from the action without prejudice to refiling their claims separately.

The magistrate judge determined that, while plaintiff Nelson had stated a plausible claim for relief, the other plaintiffs had not. She did not recommend allowing the remaining plaintiffs to amend their claims because she concluded that their permissive joinder was not feasible. She noted that all plaintiffs must sign every document that is jointly filed, *see*

¹Plaintiff currently is in custody in California. When this lawsuit was filed he was confined at the North Fork Correctional Facility in Sayre, Oklahoma.

Fed.R.Civ.P. 11(a), but that Mr. Nelson has been transferred to a different facility in California and, for legitimate security reasons, inmates may be prohibited from corresponding within and between facilities. The magistrate judge recommended that all plaintiffs but Mr. Nelson be dismissed.

Plaintiff Dotson was the only plaintiff who filed an objection. The other plaintiffs, by failing to object to the Report and Recommendation, waived their rights to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. § 636(b)(1)(C).

In addition to an objection to the Report and Recommendation, plaintiff Dotson filed a motion for an extension. His motion for an extension [Doc. #29] is **DENIED**. Mr. Dotson Plaintiff sought an extension based on the mistaken assumption that the magistrate judge was asking him to assume representation of the class, which she did not do.

In his objection, plaintiff Dotson raises again the issue of class certification and requests the appointment of counsel to represent the class. Plaintiffs' request for class certification was denied by a prior order [Doc. #26], and the court finds no basis for reconsidering that decision. Mr. Dotson does not otherwise address the magistrate judge's Report and Recommendation.


The court agrees with Magistrate Judge Robert's analysis and her conclusions that, while plaintiff Nelson has stated a plausible claim for relief, the remaining defendants have not successfully pleaded a claim and their joinder in this lawsuit is impractical. *See Pinson v. Whetsel*, 2007 WL 428191 (W.D.Okla. Feb. 1, 2007) (compiling cases discussing multi-

prisoner litigation and practical difficulties of joint litigation involving inmates).

Accordingly, the court adopts Magistrate Roberts' Report and Recommendation and dismisses plaintiffs Dotson, Ali, Allen, Wright, Siebert, Bolton and Nix from this action without prejudice to their refiling their claims in separate lawsuits. Plaintiff Nelson's claims remain for recommended resolution by the magistrate judge.

IT IS SO ORDERED.

Dated this 29th day of June, 2012.



JOE HEATON
UNITED STATES DISTRICT JUDGE